

CHAPTER 23-34

MEDICAL PEER REVIEW RECORDS

23-34-01. Definitions. As used in this chapter:

1. "Health care organization" means any hospital, hospital medical staff, clinic, long-term or extended care facility, ambulatory surgery center, emergency medical services unit, physician, group of physicians operating a clinic or outpatient care facility, combination of these entities, or federally designated state peer review organization.
2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
3. "Peer review committee" means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review.
4. "Peer review records" means all data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review committee as a part of any professional peer review, regardless of when the record is created. The term does not include original patient source documents. Peer review records also include all communications relating to a professional peer review, whether written or oral, between peer review committee members, peer review committee members and the peer review committee's staff, or peer review committee members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.
5. "Professional peer review" means all procedures a peer review committee uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers to improve patient care and treatment or to provide quality assurance.

23-34-02. Peer review records - Confidentiality. Peer review records are confidential and may be used by a peer review committee and the committee members only for conducting a professional peer review.

23-34-03. Peer review records - Privileged - Exceptions. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

23-34-04. Peer review committee - Mandatory reports - Penalty. A peer review committee shall report to an investigative panel of the board of medical examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

23-34-05. Liability of health care provider to patient. This chapter does not relieve any health care provider of any liability that the provider has incurred or may incur to a patient as a result of furnishing health care services to the patient.

23-34-06. Limitation of liability.

1. A person furnishing peer review records to a peer review committee with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.
2. A health care organization, health care provider, or member of a peer review committee is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the organization, provider, or committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the organization, provider, or committee member.